UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 325 7th Street, N.W. Suite 400 Washington, D.C. 20530, *Plaintiff,* v. INGERSOLL-DRESSER PUMP COMPANY, 150 Allen Road Suite 102 Liberty Corner, NJ 07938, INGERSOLL-RAND COMPANY 200 Chestnut Ridge Road Woodcliff Lake, NJ 07675, and FLOWSERVE CORPORATION, 222 West Las Colinas Boulevard Suite 1500 Irving, TX 75039, *Defendants.*	Civil Action No. 001818 Judge Thomas Penfield Jackson

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin preliminarily and permanently the proposed acquisition by Flowserve Corporation ("Flowserve") of Ingersoll-Dresser Pump Company ("IDP"), pursuant to a Purchase Agreement entered into by the defendants and dated February 9, 2000. The United States alleges as follows:

1. Unless it is enjoined, Flowserve's proposed acquisition of IDP will reduce the already small number of firms that compete on bids to sell certain costly, specialized and highly engineered pumps used in oil refineries and electrical generating facilities in the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Such a reduction in

competition is likely to result in higher prices and reduced selection for those pumps.

I. JURISDICTION AND VENUE

2. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

3. Each of the defendants is engaged in interstate commerce and in activities substantially affecting interstate commerce. This Court has subject matter jurisdiction over this action, and jurisdiction over the parties, pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

4. Each of the defendants has consented to personal jurisdiction in the District of Columbia. Venue is proper in this District pursuant to 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

II. THE DEFENDANTS

5. Flowserve is a New York corporation with its principal executive offices in Irving, Texas. Flowserve manufactures and sells a broad array of pumps, valves and seals used in a wide variety of manufacturing and processing industries, and provides parts and service for pumps, in the United States and abroad. Flowserve has total annual sales of over $1 billion and maintains offices and facilities at approximately 25 locations in the United States.

6. Ingersoll-Rand is a New Jersey corporation with its principal executive offices in Woodcliff Lake, New Jersey. Ingersoll-Rand is a general partner in, and controls, IDP.

7. IDP is a Delaware general partnership, headquartered in Liberty Corner, New Jersey. IDP manufactures and sells a broad array of pumps, and provides service and parts for such pumps, in the United States and abroad. IDP is one of the world's largest pump manufacturers, with annual sales of over $875 million. IDP maintains offices and facilities at

approximately 27 locations in the United States.

III. BACKGROUND

8. Flowserve and IDP each manufacture and sell for use in the United States two categories of specialized, highly engineered pumps known as "API 610 pumps" and "power plant pumps." API 610 pumps are used in the oil and gas industry, including in oil refineries, and power plant pumps are used in electrical generating facilities or "power plants."

9. API 610 pumps are specialized, rugged, highly engineered pumps that generally perform critical functions in an oil refinery, including the movement of erosive, corrosive, hot and flammable petroleum-based liquids under high pressure. API 610 pumps are designed, built, tested and shipped in accordance with comprehensive standards of the American Petroleum Institute.

10. Power plant pumps are specialized, highly engineered pumps that perform critical functions in the steam cycle of a power plant. (The steam cycle consists of a boiler or steam generator that feeds steam to a steam turbine that drives an electricity-producing generator.) The three basic categories of power plant pumps are: (1) "circulating water pumps," which deliver cooling water to condensers that condense the spent steam that has passed through a steam turbine; (2) "condensate pumps," which extract the condensed steam; and (3) "boiler feed pumps," which move the condensed steam (now very hot water) back into the boiler or steam generator to make new steam.

11. Each manufacturer of API 610 and power plant pump lines offers its lines in an array of different models and sizes. The pumps within a line differ with respect to capacity and capabilities, including, for example, the number of stages, speed, efficiency, bearing type, suction and discharge pressure, head, temperature range, vapor pressure, rated gallons per minute,

impeller diameter, suction nozzle size, discharge nozzle size, metallurgical properties, and motor type and size.

12. API 610 pumps and power plant pumps are sold pursuant to bids, which are based on extensive specifications from the customer. For each pump application in a given oil refinery or power plant project, the manufacturer selects a model and size pump and accessories to bid, and makes additional modifications to try to meet the customer's specifications.

13. The match between the requirements of a particular pump application, and the optimum operating range of the pump a manufacturer proposes to use for that application, is referred to as the "fit" of the proposed pump. A manufacturer's ability to provide an economically priced API 610 or power plant pump with a good fit is largely a function of the breadth of that manufacturer's lines of pumps and accessories.

14. Customers evaluate the competing bids, in part, on the basis of their compliance with the technical specifications that the customer had provided. For example, in addition to a manufacturer's proposed price for the required pumps, a customer may also consider how the fit of the pumps that that manufacturer proposes to use will affect the long-term operating costs of the oil refinery or power plant.

15. Customers also evaluate the commercial terms of the competing proposals, including each manufacturer's proposed price and proposed delivery dates. Delivery dates are an important aspect of the competition among API 610 and power plant pump manufacturers because the amount of time a manufacturer will require to deliver the pumps (which can vary from several months to over a year) may significantly affect the construction schedule for the project.

16. A customer that is undertaking an oil refinery or power plant construction project can avoid costly construction delays, or costly down-time in the operation of the refinery or

power plant, by selecting a manufacturer that will be able to respond quickly to requests for technical information or design changes during the design phase of the project; to requests for technical assistance, modifications or repairs during the construction or commissioning phases of the project; and to requests for service or repairs during the operating life of the pumps.

17. For those reasons, customers that are planning oil refinery or power plant construction projects in the United States seek to obtain the API 610 or power plant pumps from a manufacturer that has a substantial presence in the United States, including engineering expertise, reputation and practical operating experience with the pump's application in similar facilities in the United States; parts availability in the United States; and a substantial network of service and repair facilities in the United States.

IV. TRADE AND COMMERCE

A. RELEVANT PRODUCT MARKETS

18. The combined technical and commercial needs of the customer differ markedly for each API 610 pump or power plant pump bid. A small but significant increase in the price of a product that meets the bid specifications would not cause a significant number of customers in the United States to substitute other products that do not meet those bid specifications.

19. Each bid for API 610 pumps and power plant pumps for installation in oil refineries and power generation plants in the United States is a line of commerce and relevant product market under Section 7 of the Clayton Act.

B. RELEVANT GEOGRAPHIC MARKET

20. Those competitors that could constrain Flowserve and IDP from raising prices on bids for API 610 pumps and power plant pumps for installation in oil refineries and power generation plants, respectively, in the United States are API 610 and power plant pump

manufacturers with a substantial physical presence in the United States.

21. Customers installing these pumps in the United States prefer domestic pump suppliers because reputation is important, as is the ability to provide quick and reliable servicing with parts availability and to avoid shipping costs and delays. In addition, with minor exceptions, only domestic manufacturers have an installed base of pumps in the United States, thus allowing customers to more readily observe and evaluate the operation and reliability of the pump in comparable applications. Moreover, pumps manufactured abroad may cost more than comparable pumps manufactured in the United States.

22. The relevant geographic market for analyzing the proposed acquisition under Section 7 of the Clayton Act is the United States.

V. MARKET STRUCTURE AND ANTICOMPETITIVE EFFECTS

23. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for API 610 pumps for oil refinery projects in the United States.

24. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for circulating water pumps for power plant construction projects in the United States.

25. Based on capabilities and bidding history, there are only three credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for condensate pumps for power plant construction projects in the United States.

26. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for boiler feed pumps for power plant construction projects in the United States.

27. Although each bidder for API 610 pumps and power plant pumps may be familiar with its competitors, it does not know with any degree of certainty the commercial or technical terms of its competitors' bids prior to submitting its own bid. That uncertainty restrains bidders' pricing. By eliminating IDP, one of Flowserve's few, significant competitors, Flowserve would be able to increase its bid without increasing the probability it would lose the bid. Similarly, the few remaining bidders could also increase their bids without increasing their risk of losing. Thus, the acquisition of IDP by Flowserve creates an incentive for each bidder to bid a higher amount than it would have were IDP still a competitor.

28. Due to the broad range of pumps IDP and Flowserve offer, their overall expertise in meeting the API 610 and power plant pump needs of customers, the fit offered by their pumps, their ability to meet delivery time frames, their aftermarket parts and service availability, and other technical and commercial factors, IDP and Flowserve are frequently perceived by each other, by other bidders, and by customers as being close or strong competitors and having a significant probability of winning a given bid.

29. The magnitude of the anticompetitive effect from the proposed acquisition will be greater the more that IDP and Flowserve view each other as close or strong competitors, and other rivals view IDP as a major competitive factor.

30. United States' oil refineries and power generators have benefitted from this competition through lower prices and greater choice. The combination of IDP and Flowserve will eliminate this competition, and the customers' benefits from this competition.

VI. THE LIKELY ANTICOMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION WILL NOT BE ELIMINATED BY ENTRY

31. Substantial, timely entry of additional competitors is unlikely and, therefore, will not restrain any price increases caused by the elimination of IDP as a bidder.

32. Entry by a firm that does not currently manufacture API 610 pumps or power plant pumps would be extraordinarily difficult, costly, time consuming and financially risky; hence, such entry is highly unlikely.

33. To compete effectively, a new firm would need to offer an array of API 610 or power plant pump models. The design, production and testing of a single model of such a pump can take several years, and would require the expenditure of substantial sunk costs, as would the establishment of an engineering, parts and service network. To develop an array of pumps would further increase that time and cost.

34. Timely, substantial entry by an existing manufacturer of API 610 or power plant pumps that does not currently sell those pumps for installation in United States' oil refineries or power plants is unlikely. Such a firm could not effectively compete for sales of API 610 or power plant pumps unless it first established, in the United States, a substantial contingent of engineering personnel; a local availability of spare parts; and a substantial network of service and repair facilities. Moreover, many oil refineries and power plants will not purchase pumps from a supplier that has not demonstrated, in the United States, the reliability and efficiency of its pumps and the expertise of its engineers in the particular use for which the pump is being sought. This process can take years and the expenditure of substantial sunk costs.

VII. VIOLATION ALLEGED

35. Flowserve's acquisition of IDP may substantially lessen competition on a significant number of bids for the sale of API 610 pumps used in oil refineries in the United States and power plant pumps used in power plants in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

36. The acquisition will have the following effects, among others:

(a) Actual and potential competition between IDP and Flowserve will be eliminated;

(b) Competition generally in the manufacture, marketing and sale of API 610 pumps and power plant pumps will be lessened substantially; and

(c) Prices of API 610 pumps and power plant pumps will increase, and innovation in the development of these pumps will decrease.

VIII. REQUESTED RELIEF

WHEREFORE, plaintiff, the United States of America, requests a judgment:

(a) That the proposed acquisition of IDP by Flowserve be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) That defendants and all persons acting on their behalf be preliminarily and permanently restrained and enjoined from implementing the February 9, 2000 Purchase Agreement or any other agreement of like intent or effect;

(c) That plaintiff be awarded its costs of this action; and

(d) That plaintiff be granted such other and further relief as the Court may deem proper.

Respectfully submitted,

_____/S/_____ _____/S/_____

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